supra; 2 JARM., WILLS, *1446 et seq.; 3 WMS. EX., *1566 et seq.; 3 REDF., WILLS, *372 et seq. This whole question has been well considered by the above writers and others, and by the courts, and may now be regarded as settled. In *Cumberland* v. *Codrington* (1817), 3 Johns. Ch. 229, Chancellor KENT states the proposition, a statement which has generally been adopted by the American courts. It is interesting to note that the principal case as it is presented here could scarcely arise in England, where we find a statutory provision providing that *all* incumbrances upon land devised are made a primary charge upon the land itself, and the land is not entitled to exoneration out of the personal estate without an "expression of intention" to that effect. This statute, although enacted more than fifty years ago, (17 & 18 Vict. Ch. 113), has not met with great favor in this country. The theory of the common law rule, which is the modern American rule, is that the personal estate when receiving the benefit should bear the burden of an encumbrance, and it is excused from exoneration only when not so benefitted. This rule manifestly has reason and justice supporting it, and the benefits to be had by an adoption of the Statute of Victoria do not impress us. For a view of the law contrary to that announced in the principal case see the opinion of Judge WOODWARD in *Hoff's Appeal,* 24 Pa. 200, 203; 4 GRAY'S CAS. PROP. 635.

WRIT OF ERROR—NEW SUIT—CORPORATIONS.—Colorado Sess. Laws 1902, pp. 73, 74, c. 3, §§ 64-66, impose a license tax on corporations and permit the failure to pay such tax to be pleaded in bar of any action by the corporation. Suit by a corporation on a cause of action accruing before the passage of this law and judgment against the corporation. Writ of error sued out by the corporation after the passage of the law and the statute pleaded in bar of the writ. *Held* (three justices dissenting), that a writ of error is a new suit and the statute a good bar. *Ohio-Colorado Min. & Mill. Co.* v. *Elder et al.* (1908), — Colo. —, 99 Pac. 42.

The decision is consistent with authority and is politic and reasonable, since it does not wholly deprive the corporation of a remedy. Permission to plead the failure to pay the tax in bar of any action does not extend to an action accruing before the enactment of the statute, *Malley Co.* v. *Londoner,* 41 Colo. 436, 93 Pac. 488; but a writ of error is the commencement of a new suit. *Webster* v. *Gaff,* 6 Colo. 475. A writ of error is not, like an appeal, a continuation of the old suit but is a new suit. *Macklin* v. *Allenberg,* 100 Mo. 337; *Wooldridge* v. *Boyd,* 81 Tenn. 151; *Gregg* v. *Bethea,* 6 Port. 9; *Binford* v. *Alston,* 15 N. C. 351; *Gibbs* v. *Belcher,* 30 Tex. 79; *International Bank of Chi.* v. *Jenkins,* 107 Ill. 291. A writ of error is an original writ and is in the nature of a new suit. *Allen, Ball & Co.* v. *City of Savannah,* 9 Ga. 286; *Widber* v. *Superior Ct. of San Joaquin Co.,* 94 Cal. 430. Contra, *Hinchman* v. *Rutan,* 31 N. J. L. 496, holding that a writ of error is not a writ or original process by which a suit is commenced, within the Stat. U. S. 1862, p. 483, requiring a stamp to be affixed to the writ or other original process by which any suit is commenced in any court of record. A writ of error is not the beginning of a new action but a proceeding in a pending action and a continuation of the same. *Garrison* v. *Cheeney,* 1 Wash. T. 489.